

IN THE HIGH COURT OF DELHI AT NEW DELHI

CM(M) No.367/2007

Alok Kumar Jain Petitioner
! through: Mr.Sandeep Sethi, Sr. Adv. with
Mr.Anshu Mahajan, Adv.

VERSUS

\$ Purnima Jain Respondent
^ through: Mr.Harish Malhotra, Sr. Adv. with
Mr.Tanuj Khurana, Adv.

RESERVED ON : 02-04-2007

% **DATE OF DECISION:** 17-04-2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y
3. Whether judgment should be reported in Digest? Y

: PRADEEP NANDRAJOG, J.

1. Alok Kumar Jain was married to Ms.Purnima Jain at New Delhi. They were blessed with 2 daughters.
2. Alok Kumar Jain was employed as a Senior Manager with Engineers India Ltd. Unfortunately for the couple their daughter, Radhika, suffered from severe hearing loss of both ears. The couple spent considerable money on her treatment.

In the year 2000, Alok Kumar Jain, in consultation with his wife, decided that if he took up employment in Abu Dhabi he could enhance his monetary prospects. He tendered his resignation. He received Rs.27 lacs as terminal benefits from Engineers India Ltd. The money was deposited in a joint account operated by the husband and the wife. The husband took up employment in Abu Dhabi. Unfortunately, the couple separated. The 2 daughters are with the mother.

3. The wife filed a petition for divorce under Section 13(1)(i)(a) of the Hindu Marriage Act. She filed an application under Section 24 of the Hindu Marriage Act praying that she be granted interim maintenance @Rs.2 lacs per month. She also prayed that the husband should pay to her Rs.11 lacs for treatment of their daughter Baby Radhika.

4. To sustain the claim she averred that her husband was earning approximately Rs.7 lacs per month in Abu Dhabi. That he was being provided an accommodation free of cost by the employer.

5. In the reply, husband stated that over the last 3 years, the wife had withdrawn approximately Rs.56 lacs from the joint accounts maintained by the couple. That she had

exaggerated the income of the husband. That his monthly income was Rs.2.11 lacs. That out of Rs.56 lacs withdrawn by the wife, she had made investments, details whereof was not disclosed to the husband. Not denying his liability to maintain the wife and the 2 daughters, it was stated by Alok Kumar Jain that the wife was having sufficient funds, interest income wherefrom was sufficient to sustain the monthly expenses of the family.

6. By a cryptic order, without calling upon the wife to explain how she had spent Rs.56 lacs which was withdrawn by her from the joint accounts, learned Matrimonial Judge has directed the husband to pay maintenance of Rs.20,000/- per month for the benefit of the 2 minor daughters with effect from the date of the application.

7. In respect of the claim of the wife that Rs.11 lacs be paid for medical treatment of the daughter Baby Radhika, learned Judge has opined that issue would be decided when the wife produces details of the likely expenses supported with the opinion of renowned surgeon.

8. Impugned order dated 13.2.2007 has been challenged by the husband inter alia on the ground that the

learned Judge has ignored that the wife had not accounted for Rs.56 lacs withdrawn by her from the joint accounts maintained by the husband and the wife.

9. Since I am remanding the matter for fresh adjudication, lest prejudice is caused to either party, I refrain from discussing the plethora of precedents cited at the Bar by learned counsel for the parties.

10. Law under Section 24 of the Hindu Marriage Act is well crystallized. From the judicial precedents, factors which can be culled out as required to be kept in mind while awarding interim maintenance are as under:-

- (i) Status of the parties,
- (ii) Reasonable wants of the claimant,
- (iii) The income and property of the claimant,
- (iv) Number of persons to be maintained by the husband,
- (v) Liabilities, if any, of the husband,
- (vi) The amount required by the wife to live a similar life style as she enjoyed in the matrimonial home keeping in view food, clothing, shelter, educational and medical needs of the wife and the children, if any, residing with the wife and
- (vii) Payment capacity of the husband.

11. Further, where it is noted that the respective spouses have not come out with a truthful version of their income, some guesswork has to be resorted to by the Court while forming an opinion as to what could possibly be the income of the 2 spouses. This guesswork has to be based on the status of the family, the place where they are residing and the past expenses on the children, if any.

12. In the instant case, husband has truthfully disclosed his monthly income in Abu Dhabi i.e. Rs.2.11 lacs per month. While deciding what maintenance has to be paid to the wife who is maintaining 2 daughters, cost of living in Abu Dhabi has to be taken note of.

13. If this was the only fact to be considered, there would have been no problem in sustaining the impugned order. However, there is a problem. The problem is non disclosure of how has the wife spent appropriated Rs.56 lacs over the past 3 years. Admittedly, said amount was available in the joint accounts of the parties. Admittedly, said amount has dissipated.

14. An additional fact to be noted is that the wife and the 2 daughters are living in a flat purchased by the husband,

i.e., no rent is being paid by the wife.

15. Further, admittedly, Baby Radhika needs considerable money for her medical treatment. But, on this issue, learned Matrimonial Judge has kept the matter open for adjudication as and when wife provides cogent material in the form of medical opinion supported with evidence as to how much money would be required for the cochlear operation of the daughter.

16. It is not in dispute that 2 accounts were opened in the joint names of the husband and the wife with Corporation Bank, Bhikaji Cama Place and State Bank of India, Vasant Vihar respectively. The second account is a NRE account.

17. From the statement of bank accounts filed by the husband, undisputed position is that between February 2001 to January 2004, a sum of Rs.61,94,011/- was credited in the said 2 accounts. It is also not in dispute that the wife has withdrawn a sum of Rs.56,02,000/- from the 2 accounts between 1.2.2001 to 28.1.2004.

18. From the statement of bank accounts it is further revealed that between 24.3.2003 to 28.1.2004 i.e. in approximately 10 months, the wife has withdrawn

Rs.41,78,000/- from the 2 accounts. It would be interesting to note that the wife sought divorce by filing a petition on 29.1.2004.

19. The statement of bank accounts show that between the years 2001 to 2003, the wife has spent Rs.5,25,303/- by making cash withdrawals, paying school fee, electricity and water bills etc. in sum of Rs.5,25,303/-. In this period she has withdrawn or spent Rs.6,12,000/- for purchase of a car, a computer + a hearing aid with FM receiver for Baby Radhika. Further, between March 2003 to March 2007 the wife has withdrawn Rs.9,80,000/-, which approximates to Rs.20,000/- per month for household expenses.

20. In respect of the huge cash withdrawals made by the wife only Rs.18,94,000/- have been accounted for. These are in the shape of 2 fixed deposits totalling Rs.14 lacs + monies deposited in the public provident fund account opened in the name of the children.

21. Thus, an approximate sum of Rs.34,00,000/- remains unexplained.

22. If I look to the statement of accounts, it is obvious that between the year 2001 to 2003, the wife spent

Rs.5,25,303/- to sustain the household, pay the school fee and electricity and water bills. During this period, she purchased a car and a sophisticated hearing aid + a computer for the daughter for which 3 items she spent Rs.6,12,000/-. Thereafter, from March 2003 to March 2007 i.e. in 4 years she withdrew Rs.4,80,000/- presumably spent towards household expenses for said period.

23. It is evident that the wife was able to sustain herself and the daughters in sum of Rs.20,000/- per month as household expenses + other miscellaneous expenses excluding capital expenses incurred for purchase of a car, hearing aid and a computer.

24. The learned Judge ought to have called upon the wife to disclose on oath as to where has she spent or invested approximately Rs.34 lacs. The learned Judge ought to have called upon the wife to explain as to why she withdrew Rs.41,78,000/- between 24.3.2003 and 28.1.2004. What was the need to withdraw such an heavy amount?

25. Further investigation was required to be made as to in what manner interest accruing on the 2 fixed deposits totalling Rs.14 lacs was being spent by the wife.

26. It could well be argued that the wife has invested huge sums in undisclosed places wherefrom she is getting considerable income by way of interest or dividends.

27. I need not analyze the evidence on record any further inasmuch as I am relegating the parties before the learned Matrimonial Judge and therefore I do not want either party to be prejudiced at the inquiry, lest any observation made by me, inadvertently concludes the issue one way or the other.

28. The petition accordingly stands disposed of quashing the impugned order dated 13.2.2007.

29. The matter is remanded for fresh adjudication before the learned Matrimonial Judge. I direct that at the remanded proceedings, learned Matrimonial Judge would call upon the wife to file a detailed affidavit disclosing investments made by her as also render a true account of all withdrawals effected by the wife from the year 2001 till date. Further, the wife would be called upon to explain details of the monthly household expenditure as also expenses incurred on the education and medical treatment of the 2 daughters. Further, the wife would be called upon to explain withdrawals made in

sum of Rs.41,78,000/- from 24.3.2003 to 28.1.2004. Further, in respect of withdrawals made prior and subsequent thereto, the wife would be called upon to explain that if she could maintain herself and the 2 daughters in approximately Rs.20,000/- per month preceding and succeeding the period 24.3.2003 to 28.1.2004, where has she spent the money withdrawn between 24.3.2003 to 28.1.2004.

30. An analysis of withdrawals made from the 2 accounts from time to time shall be done by the learned Matrimonial Judge and thereafter the application under Section 24 of the Hindu Marriage Act filed by the wife would be re-decided. Needless to state, principles culled out by me in para 10 above would be kept in view by the learned Matrimonial Judge while re-deciding the application.

31. No costs.

April 17, 2007
dk

(PRADEEP NANDRAJOG)
JUDGE